

on this a proviso that the said



**A Breefe Relation by the Commoners
in Lincolnshire, of their Legall
Interest, and that nothing of
Interest the Undertakers have in Law.**

The owners and Commoners in the Fenne between Bourne & Kyme Eas in the County of Lincoln by reason of their Seniorities, Reliances, and Inhabitations in the Townes, Villages have time out of minde, without memory of man, taken all manner of profits arising out of the said Fenne and Commones, both for sustentation of their persons and Common of Pasture for their Cattell, (as appurtenant to their Seniories and Reliances, and are, and ever have been (by Custome) charged by reason of their Seniorities, with the repairing of many Draines, Watercourses, Banks, Sluices, and Gates, for the bettering and making them so usefull for them, and for watering severall grounds in many of the said Townships, which they have been much interrupted in by severall undertakers this many years in making of new workes, as designed continued at Court to deprive us of our ancient Rights, contrary and against the known Lawes of the Land.

By the 9. H. 3. cap. 15. no Free-man shall be distrained to make Banks, but such as were of old time and of right have been accustomed to make them in the time of King Henry the Grandfather.

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the said

Magna Charta.

2. Also in the 16. Chap. the same year provides that no Banks shall be defaced from hence forth, but such as were in defence in the time of H. our Grandfather, by the same places and bounds as they were in his time.

By the 15. and 16. Chapters the Undertaker shall not tax me for any ground to make new Banks that before were not in charge.

This is manifested to be the true meaning of *Magna Charta* by the succeeding Statute (*v. 2.*) the 25. and 45. *Edw. 3.* 21. *R. 2.* 1. *H. 4.* and especially the 12. of *Edw. 4.*

By the 23. *H. 8.* chap. 5. the workes and words mentioned in the 6. and 7. Chapters of the 12. *Edw. 4.* were united and knir up in one standing Commission, commonly called a Commission of Sewers, and all those words and workes are subject to the Survey of the Commissioners mentioned in that Statute of 23. *H. 8.* But then by the workes and words mentioned in the 6. chap. 12. *E. 4.* are to be pursued as proper to the 6. *H. 6.* chap. 5. and the fau'ts and words mentioned in the 7. Chap. *Edw. 4.* are to be pursued according as is set forth in the 7. Chapter; for it is commanded by the sayd 23. *H. 8.* that the Justices shall doe therein as to the Kings Justices appertaineth, after the Lawes and Statutes of our Realme, which includes the sayd 6. and 7. chap. *E. 4.*

† Observe the Undertakers proceeded not by Jury, but by directions of the Kings Letters.

* They layd uncertaine tax upon no body: of purpose it might not be payed.

† The practice is, and ought to be by Jury thus; is there a Delinquent found by Inquisition upon the substance of the 6. chap. of *Edw. 4.* Let the Commissioners proceed against him for the repaire, or making new that which is so found to be hurtfull in his default by a tax, assesse, distresse, or sale.

Is there a Delinquent found by Inquisition upon the substance mentioned in the 7. chap. of *Edw. 4.* Let them proceed against them by giving them by *sewre facies*, halfe a years time to remove or correct the sayd nuisance as the Justices appoint upon paine of 100 Marke to be estraited.

Thus you see the power of Commissioners by the 23. *H. 8.* chap. 5. is limited in matter of fact by the former intentions of the 6. and 7. chap. of *E. 4.* and they are limited in matter of forme by the words of the 23. *H. 8.* which re- straines



(2)
straines them to doe as belongs to the Kings Justices according to the Lawes, Customes, and Statutes of this Kingdome.

Now if Commissioners of Sewers be tyed to this matter of first and forme, examine how the Undertakers by their new Law can take our Inheritance, without our consent and liking, to make new Draines, Binks, and Goats, for the satisfying their owne covetous desires, notwithstanding these limitations the innovating Undertakers would shelter themselves by words in the sayd 23. H. 8. viz. according to your discretions, and according to the Lawes of Rumney-Marsh in that Statute expressed, implying by the word discretion, that they may doe what they please, which glosse confounds the text, for such discretion is absolute and apparent indiscretion, not supportable by that Statute, nor any other Law, their discretions being to be guided by Law and Custome, as formerly expressed.

And as concerning their imaginary proceedings according to the Lawes of Rumney-Marsh, that is most ridiculous; for I pray you observe the Charter granted the 36. yeare of H. 3. to the men of Rumney-Marsh, and you will finde that nothing is granted, but what was time out of minde in use (excepting a restraint to the Shiriffe for meddling with distresses.)

Hereby yee see Custome time out of minde begets a Rule, and was the ground of this Charter, which Charter was the ground of the Commission of 41. H. 3. to Hen. Bathama, to survey the Walls and Water Courfes, and to cause them to be repaired by those that are bound and charged with the reparation of them; here is *nihil novi*, but *de novo*, as accustomed to be repaired or new made, agreeing to *Magna Charta* above specified.

Thus you see the projects of drayning hath no foot hold or congruency with Custome, use, or any Law or word of Statute before recited, but is a meare Arbitrary proceeding against those Lawes.

They plead that they have layd out vast summes of Money.

To

Notes that before the 43. Eliz. there was no generall Act for drayning. Tyndalls, 4. Jac. maketh a particular Act, and there are some other particular grounds, whereby it is most certain that without a speciall direction by Statute, or without the power of the said 43. Eliz. no person is authorized by the 33. H. 8. chap. 5. or any other Statute to undertake that designe, for if otherwise the said 43. Eliz.

Tyndalls, 4. Jac. and some other Statutes for Plumsted Marsh, 23. Eliz. were to be judged Acts to no purpose made.

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To this I heare some men say, that it is improper for him to expect a Parliament to succor herein, when as he hath utterly waved and rejected the Parliament direction, which appears to be given him by the words of 43. Eliz. chap. 11. wherein all draynings are graciously provided for, both to the content of the Parties interested, and also for the due and fit recompence to the Undertaker, he hath thus spured against a Parliamentall course, why should he now hope for a Parliament redresse to maintaine his Arbitrary Course, which will reach Hills and Mountaines, when we have no more

low Grounds left to satisfie their covetous desires.

That abuses to the Persons, Goods, Lands, Draynes, Goats and Banks, I leave to the Expression of the severall Petitions exhibited by them that are grieved and oppressed by the Undertakers.

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